



DAVID J. RIVERA
CITY MANAGER

MARY C. BLASI
DEPUTY CITY MANAGER

April 14, 2010

Mr. Brad Mehaffy
National Indian Gaming Commission
1441 L Street, NW - Suite 9100
Washington, DC 20005

Re: Proposed National Environmental Policy Act Procedures Manual

Dear Mr. Mehaffy:

The City of Coconut Creek appreciates the opportunity to submit comments on the draft manual developed to guide the preparation of environmental compliance documents under the National Environmental Policy Act (NEPA). Over the years, the City has become well acquainted with the NEPA review process through the casino and trust land expansion proposals by the Seminole Tribe of Florida. The City has commented many times on the inadequacy of NEPA compliance in the area of tribal development activities, and submits these comments to assist the NIGC in addressing the problem.

Before addressing our specific concerns and recommendations, the City wishes to acknowledge the positive step that the NIGC is taking in developing a comprehensive NEPA manual, which promises to be a useful tool for the various entities, including local governments such as ours, involved in and affected by the NIGC's environmental review of proposed actions. The NIGC draft manual is a clear improvement over the approach used by BIA. We therefore recommend that the NIGC consult with BIA to assist BIA in improving its own NEPA procedures. In addition, in cases where BIA and NIGC are joint lead agencies, we recommend that the NIGC NEPA guidance control because it will ensure more balanced and transparent decision-making.

It is the City's experience that the NEPA process is much more thorough and effective, and much less controversial, in situations where local governments receive cooperating agency status and are consulted at the outset of the process. Too often local governments are treated by federal agencies as obstacles or adversaries rather than valuable sources of information, insight, and cooperation in finding ways to reduce potential negative impacts and develop mitigation in furtherance of a proposed project. Similarly, tribal consultation with local governments at the earliest stages of planning can help to resolve conflicts and streamline the environmental review process.

The City agrees with the NIGC's proposed limitation on the role of tribes in the development of NEPA compliance documents. Tribes with pending proposals should have no contact with the consultants who prepare the environmental assessments and environmental impact statements beyond the provision of information, which should occur only with prior action agency approval. In the end, it is important for tribes, the action agencies, and the local governments alike that the NEPA process be clearly seen as free from undue influence, and safe from challenges of impropriety that can result in significant delay and expense to all parties.

It is essential that the draft manual be revised to enable NIGC to review tribal gaming ordinances under NEPA. An automatic exemption based on the length of NEPA review is inappropriate for such ordinances, which can in some cases have major environmental impacts.

One of the most egregious failings of the manual relates to the discussion of purpose and need (section 5.6.3.5). As clarified by the federal courts in recent years, the stated purpose and need of an action must reflect the purpose of the agency in complying with, and ensuring compliance with, the relevant law or laws, not just the desires of the applicant. Taking into account solely the goals of the tribe would have the effect of reducing the range of alternatives considered and skewing the process toward tribal interests. The guidance must be corrected on this issue, as a matter of law.

The draft manual's discussion of alternatives (section 4.10.4.3) must also be revised to remove the implication that the relatively high cost of an alternative can be used as the basis to exclude it from consideration. A tribe's preference not to accept an alternative based on cost or location or other factor cannot be allowed to restrict the analysis of alternatives.

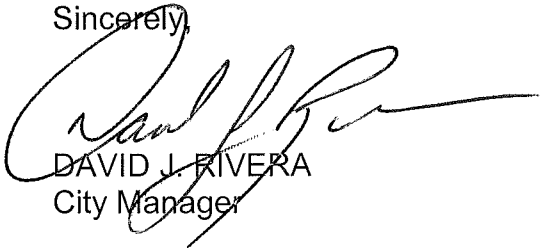
Economic effects on local government should be included among the resource categories (Appendix A) evaluated in an environmental assessment or impact statement.

The City appreciates the NIGC's attention to the usefulness of memorandums of understanding (Appendix B) in facilitating the NEPA process, and would suggest that another sample MOU be provided to lay out, in keeping with the above recommendations, the appropriate role of the consultant developing the review documents and the proper relationship between the consultant and the applicant tribe. Such clearly defined limits on tribal involvement will improve the perceived and actual objectivity of the environmental review.

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Thank you for the opportunity to submit these comments. Please contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "David J. Rivera", written over the printed name and title.

DAVID J. RIVERA
City Manager

cc: Senator Bill Nelson
Senator George LeMieux
Congressman Ron Klein
Congressman Ted Deutch
Governor Charlie Crist
Attorney General Bill McCollum
BIA Assistant Secretary Larry Echo Hawk
BIA Acting Deputy Assistant Secretary George T. Skibine